

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BACKPAGE.COM LLC,

Plaintiff,

and

THE INTERNET ARCHIVE,

Plaintiff Intervenor,

vs.

ROB MCKENNA, Attorney General of
Washington, et al.,

Defendants, in their official capacities.

No. C12-954-RSM

ANSWER TO COMPLAINT IN
INTERVENTION FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF REGARDING
SB 6251

Defendant DANIEL T. SATTERBERG, King County Prosecuting Attorney and defendants
RANDY J. FLYCKT, Adams County Prosecuting Attorney; ANDREW K. MILLER, Benton
County Prosecuting Attorney; GARY RIESEN, Chelan County Prosecuting Attorney; DEBORAH
S. KELLY, Clallam County Prosecuting Attorney; ANTHONY F. GOLIK, Clark County
Prosecuting Attorney; REA L. CULWELL, Columbia County Prosecuting Attorney; SUSAN I.
BAUR, Cowlitz County Prosecuting Attorney; STEVEN M. CLEM, Douglas County Prosecuting
Attorney; MICHAEL SANDONA, Ferry County Prosecuting Attorney; SHAWN SANT, Franklin

ANSWER TO INTERNET ARCHIVE'S COMPLAINT
IN INTERVENTION
(C12-954-RSM) - 1

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1 County Prosecuting Attorney; MATTHEW L. NEWBERG, Garfield County Prosecuting Attorney;
 2 ANGUS LEE, Grant County Prosecuting Attorney; H. STEWARD MENEFE, Greys Harbor
 3 County Prosecuting Attorney; GREGORY M. BANKS, Island County Prosecuting Attorney;
 4 SCOTT ROSEKRANS, Jefferson County Prosecuting Attorney; GREG ZEMPEL, Kittitas County
 5 Prosecuting Attorney; LORI LYNN HOCTOR, Klickitat County Prosecuting Attorney;
 6 JONATHAN L. MEYER, Lewis County Prosecuting Attorney; JEFF BARKDULL, Lincoln
 7 County Prosecuting Attorney; MICHAEL DORCY, Mason County Prosecuting Attorney; KARL
 8 SLOAN, Okanogan County Prosecuting Attorney; DAVID J. BURKE, Pacific County Prosecuting
 9 Attorney; THOMAS A. METZGER, Pend Oreille County Prosecuting Attorney; MARK
 10 LINDQUIST, Pierce County Prosecuting Attorney; RANDALL K. GAYLORD, San Juan County
 11 Prosecuting Attorney; RICHARD A. WEYRICH, Skagit County Prosecuting Attorney; ADAM N.
 12 KICK, Skamania County Prosecuting Attorney; MARK K. ROE, Snohomish County Prosecuting
 13 Attorney; STEVE TUCKER, Spokane County Prosecuting Attorney; JON TUNHEIM, Thurston
 14 County Prosecuting Attorney; DANIEL BIGELOW, Wahkiakam County Prosecuting Attorney;
 15 JAMES L. NAGLE, Walla Walla County Prosecuting Attorney; DAVID S. McEACHRAN,
 16 Whatcom County Prosecuting Attorney; DENIS P. TRACY, Whitman County Prosecuting
 17 Attorney; JAMES P. HAGARTY, Yakima County Prosecuting Attorney, in their official capacities,
 18 herewith "defendants" in answer to plaintiff's Amended complaint to Declare Invalid and Enjoin
 19 Enforcement of Washington Senate Bill 6251 for Violation of the Communications Decency Act,
 20 and The First and Fourteenth Amendments and Commerce Clause of the United States Constitution
 21 admit, deny and state as follows:
 22
 23

ANSWER TO INTERNET ARCHIVE'S COMPLAINT
 IN INTERVENTION
 (C12-954-RSM) - 2

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INTRODUCTION

1
2 1. Defendants admit only that this is an action pursuant to 42 U.S.C. §1983 and the
3 Declaratory Judgment Act, 28 U.S.C. §2201, to enjoin enforcement of a new Washington law,
4 Senate Bill 6251 9SB 6251”. All other allegations contained in paragraph 1 of plaintiff-
5 intervenor’s complaint are denied.

6 2. Defendants admit only that SB 6251 purpose is to prevent sex trafficking of
7 children, that advertising commercial sexual abuse of a minor is a class c felony subject to
8 criminal penalties under Washington law, and that SB 6251 applies to a person who “knowingly
9 publishes, disseminates, or displays, or causes directly or indirectly to be published,
10 disseminated, or displayed any advertisement for a commercial sex act, which is to take place in
11 the state of Washington and that includes the depiction of a minor. All other allegations
12 contained in paragraph 2 of plaintiff-intervenor’s complaint are denied.

13 3. Defendants admit only that in a prosecution under SB 6251 “it is not a defense
14 that the defendant did not know the age of the minor depicted in the advertisement.” Defendants
15 further admit only that it is a defense that “the defendant made a reasonable bona fide attempt to
16 ascertain the true age of the minor depicted in the advertisement”. All other allegations
17 contained in paragraph 3 of plaintiff-intervenor’s complaint are denied.

18 4. Defendants lack knowledge sufficient to form a belief as to the truth or the falsity
19 of the allegations regarding Tennessee, New York and New Jersey and therefore deny the same.
20 All other allegations contained in paragraph 4 of plaintiff-intervenor’s complaint are denied.

21 5. Defendants admit only that the Court temporarily enjoined enforcement of SB
22 6251. Defendants deny all other allegations contained in paragraph 5 of plaintiff-intervenor’s
23 complaint.

PARTIES

6. Defendants admit the allegations contained in paragraph 6 of plaintiff-intervenor's complaint.

7. Defendants admit the allegations contained in paragraph 7 of plaintiff-intervenor's complaint.

8. Defendants admit the allegations contained in paragraph 8 of plaintiff-intervenor's amended complaint.

9. Defendants admit the allegations contained in paragraph 9 of plaintiff-intervenor's amended complaint.

JURISDICTION AND VENUE

10. Defendants admit the allegations contained in paragraph 10 of plaintiff-intervenor's complaint.

11. Defendants deny the allegations contained in paragraph 11 of plaintiff-intervenor's complaint.

12. Defendants admit the allegations contained in paragraph 12 of plaintiff-intervenor's complaint.

FACTUAL ALLEGATIONS

13. Defendants admit only that the Internet Archive is a 501(c)(3) non-profit. Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 13 of plaintiff-intervenor's complaint and therefore deny the same.

1 14. Defendants are without information sufficient to form a belief as to the truth or
2 falsity of the allegations contained in paragraph 14 of plaintiff-intervenor's complaint and therefore
3 deny the same.

4 15. Defendants are without information sufficient to form a belief as to the truth or
5 falsity of the allegations contained in paragraph 15 of plaintiff-intervenor's complaint and therefore
6 deny the same.

7 16. Defendants are without information sufficient to form a belief as to the truth or
8 falsity of the allegations contained in paragraph 16 of plaintiff-intervenor's complaint and therefore
9 deny the same.

10 17. Defendants are without information sufficient to form a belief as to the truth or
11 falsity of the allegations contained in paragraph 17 of plaintiff-intervenor's complaint and therefore
12 deny the same.

13 18. Defendants are without information sufficient to form a belief as to the truth or
14 falsity of the allegations contained in paragraph 18 of plaintiff-intervenor's complaint and therefore
15 deny the same.

16 19. Defendants admit only that in September 2010, Craigslist did remove the adult
17 services category from its website. Defendants are without information sufficient to form a belief as
18 to the truth or falsity of the remaining allegations contained in paragraph 19 of plaintiff-intervenor's
19 complaint and therefore deny the same.

20 20. Defendants are without information sufficient to form a belief as to the truth or
21 falsity of the allegations contained in paragraph 20 of plaintiff-intervenor's complaint and therefore
22 deny the same.

1 21. Defendants are without information sufficient to form a belief as to the truth or
2 falsity of the allegations contained in paragraph 21 of plaintiff-intervenor's complaint and therefore
3 deny the same.

4 22. Defendants admit the allegations contained in paragraph 22 of plaintiff-intervenor's
5 complaint and therefore deny the same.

6 23. Defendants are without information sufficient to form a belief as to the truth or
7 falsity of the allegations contained in paragraph 23 of plaintiff-intervenor's complaint and therefore
8 deny the same.

9 24. Defendants are without information sufficient to form a belief as to the truth or
10 falsity of the allegations contained in paragraph 24 of plaintiff-intervenor's complaint and therefore
11 deny the same.

12 25. Defendants admit the allegations contained in paragraph 25 of plaintiff-intervenor's
13 complaint.

14 26. Defendants deny the allegations contained in paragraph 26 of plaintiff-intervenor's
15 complaint.

16 27. Defendants deny the allegations contained in paragraph 27 of plaintiff-intervenor's
17 complaint.

18 **CLAIM I: VIOLATION OF THE COMMUNICATIONS DECENCY ACT, 47 U.S.C. §230,**
19 **PURSUANT TO 42 U.S.C. §1983**

20 28. Answering paragraph 28 of plaintiff-intervenor's complaint, defendants re-allege
21 their previous responses to plaintiff's amended complaint as if fully set forth herein.
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23

1 29. Defendants are without information sufficient to form a belief as to the truth or
2 falsity of the allegations contained in paragraph 29 of plaintiff-intervenor's complaint and therefore
3 deny the same.

4 30. Defendants deny the allegations contained in paragraph 30 of plaintiff-intervenor's
5 complaint.

6 31. Defendants deny the allegations contained in paragraph 31 of plaintiff-intervenor's
7 complaint.

8 32. Defendants deny the allegations contained in paragraph 32 of plaintiff-intervenor's
9 complaint.

10 **CLAIM II: VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**
11 **OF THE CONSTITUTION, PURSUANT TO 42 U.S.C. §1983**

12 33. Answering paragraph 33 of plaintiff-intervenor's complaint, defendants re-allege
13 their previous responses to plaintiff-intervenor's complaint as if fully set forth herein.

14 34. Defendants deny the allegations contained in paragraph 34 of plaintiff-intervenor's
15 complaint.

16 35. Defendants deny the allegations contained in paragraph 35 of plaintiff-intervenor's
17 complaint.

18 36. Defendants deny the allegations contained in paragraph 36 of plaintiff-intervenor's
19 complaint.

20 **CLAIM III: VIOLATION OF THE COMMERCE CLAUSE OF**
21 **THE CONSTITUTION, PURSUANT TO 42 U.S.C. §1983**

22 37. Answering paragraph 37 of plaintiff-intervenor's complaint, defendants re-allege
23 their previous responses to plaintiff-intervenor's complaint as if fully set forth herein.

1 38. Defendants deny the allegations contained in paragraph 38 of plaintiff-intervenor's
2 complaint.

3 39. Defendants deny the allegations contained in paragraph 39 of plaintiff-intervenor's
4 complaint.

5 **CLAIM IV: DECLARATORY RELIEF PURSUANT TO 28 U.S.C. §2201**

6 40. Answering paragraph 40 of plaintiff-intervenor's complaint, defendants re-allege
7 their previous responses to plaintiff-intervenor's complaint as if fully set forth herein.

8 41. Defendants deny the allegations contained in paragraph 41 of plaintiff-intervenor's
9 complaint.

10 42. Defendants deny the allegations contained in paragraph 42 of plaintiff-intervenor's
11 complaint.

12 **PRAYER FOR RELIEF**

13 Defendants deny that plaintiff-intervenor is entitled to any of the relief sought in plaintiff-
14 intervenor's prayer for relief in paragraphs 1 – 4 on page 10 of plaintiff-intervenor's complaint.

15 By way of further answer and affirmative defenses, and without admitting anything
16 previously denied, defendants state as follows:

17 1. Plaintiff-intervenor has failed to state a claim upon which relief may be granted.

18 2. Plaintiff-intervenor lacks standing to bring this action.

1 DATED this 30th day of July, 2012.

2 DANIEL T. SATTERBERG
3 King County Prosecuting Attorney

4
5 By: s/David J. Eldred
6 DAVID J. ELDRED, WSBA No. 26125
7 Senior Deputy Prosecuting Attorneys
8 Attorneys for Defendants

9 By: s/Amy K. Eiden
10 AMY K. EIDEN, WSBA No. 35105
11 Senior Deputy Prosecuting Attorneys
12 Attorneys for Defendants
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 30, 2012, I electronically filed the foregoing document with the United States District Court using the CM/ECF filing system which will send notification of such filing to all counsel of record.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 30th day of July, 2012.

s/Amy Moe
AMY MOE, Legal Secretary